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1942 **File No.** O. Contempt of Courts/42

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Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under the

Contempt of Courts —

R. 18
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File No. O. Contempt of Courts/42

Std. Scott. Slip 24 B e.

194-A

Submitted.

Attention is invited to para. 1 of the office note dated the 9-2-41 at p. 19 ante. Mr. Saokar, the Administrative Officer of the Dhulia Municipality, reports that the Sub-Committee appointed by the School Board of the Malegaon Municipality to inquire into the conduct of Mr. Abdul Rahaman Abdul Rashid (who has filed the suit against the said Administrative Officer & has submitted a report to the effect that the said Abdul Rahaman was not guilty of any offence of misappropriation of school moneys as decided by the Administrative Officer. As this is the point arising in the suit, the Administrative Officer considers that the School Board has become guilty of contempt of Court. It is therefore proposed that the contempt might be brought to the notice of the High Court. L.D. is requested to advise in the matter.

2. Any act done or writing published which interferes with the due course of justice is a contempt of Court (R.vs.Gray (1900) 2 Q.B. 36. but before expressing any opinion the E.D. may be requested to obtain and forward to this office a copy of the report of the Enquiry Committee appointed by the School Board of the Malegaon Municipality.

Plaint in the suit filed by Abdul Rahaman against Mr. Saokar and a copy of the

3. The reference is made by the Asstt. Secy., E.D.. It is for orders whether the attention of the E.D. may be invited to para. 104 of the Sectt.

Id/- D.W.D. 11/1 S.A.S.

(A) It do not appear to be necessary. The question raised is whether the High Court should be moved by Govt. or whether it should be left to the trying judge to move the High Court for action for contempt of Court.

(B) It may be done and papers returned to E.D.

Sd/ R.T.K.
23-1

D.S.

It is not understood why Govt. is being moved in this matter. If contempt is alleged it would normally be for the aggrieved party viz. Mr.K.D. Saokar in this case to take necessary steps to move the High Court or to institute any other appropriate proceeding in order to get the offender punished.

Attention of E.D. is also invited to para 104 of the Secretariat Instructions since this reference has been made by an Asstt.Secy.

Sd/-
29-1-42

R.LaA.

Sd/- P.V.M
3-2

U.R. to E.D. No1083 dt.5-2-42

O
V.M.D.
4-5-56

R.I.No.5206
13.6.42

Submitted.

This is in connection with C.S.No.6 of 1941 filed by one Abdul ~~Rahim~~ Karim in the Court of the Second Class Sub-Judge, Malegaon, against Mr. K.D.Saokar, Ex-Administrative Officer, Dhulia and another. It was pointed out to E.D. that the suit not having been filed against the Administrative Officer as such, it was not necessary to sanction its defence. Govt. could however sanction legal assistance to Mr. Saokar for the defence of the suit under rule 189, L.O. Rs. In their Memo. dated 24.4.1941 Govt. conveyed sanction to the grant of legal assistance to Mr. Saokar. Subsequently Mr. Saokar pointed out that a contempt of Court had been committed by the members of the School Board by submitting a report that the plaintiff in the suit was not guilty of any offence of misappropriation of school moneys as decided by the Admn. Officer. Mr. Saokar desired that the contempt might be brought to the notice of the High Court by Govt. In his U.R.No.1083 dated 5.2.42 the R.L.A. pointed out that it was for the aggrieved party himself (and not for Govt) to take the necessary steps to move the High Court or to institute other appropriate proceedings in order to get the offender punished. Mr. Saokar was informed accordingly. But he has still forwarded certain papers (copies of plaint, Written Statement, issues report etc.) for perusal by the Adv.General and requests that the High Court may be moved in the matter. It appears that the E.D. has expressed its willingness to allow

Mr. Saokar the assistance of the Adv. General for the purpose. The R.L.A. is now requested to advise whether the case is a fit one to move the High Court as proposed by Mr. Saokar and if so, whehther there is any objection to trouble the Adv. General to give the necessary advice to Mr. Saokar in this case.

2. It is not clear what the E.D. means by " advice " that the Adv. General is asked to give to Mr. Saokar. From his letter dated 22nd May 1948 it appears that Mr. Saokar desires that the High ourt should be moved by the Adv. General. This does not appear to be feasible. It seems that when the E.D. expressed his willingness to give the assistance of the Adv. General, this Deptt. Was not consulted. The case does not also appear one in which the Adv. General should be troubled. The attention of theE.D. may therefore be invited to R.L.A's U.R. No.1083 Jated 5-8-1948and that Deptt. may be requested to sanction the expenditure of the Counsel that Mr. Saokar may have to engage for bringing the contempt to the notice of the High Court.

Sd/-
26-6

V.M.D.
4-5-56

Office of the R.L.A.

R.L.A. has already pointed out that it is for Mr. Saokar or other aggrieved party to take steps to ~~xxx~~ institute the necessary proceedings. If the E.D. desired to grant legal assistance to Mr. Saokar for the purpose, the proper course for it would be to pass an appropriate order under rule 189 (1) of the Law Officers Rules. The Advocate General cannot appear on the appellate side unless instructed by an Advocate on that side or by an attorney; and to engage him would involve Government in considerable expense which would not be justified unless the case is of great importance. As the case does not appear to be of such importance, the best course if aid is to be given to Mr. Saokar would be to ask him to engage his own Counsel, Government agreeing topay the fees under rule 189 of the Law Officers Rules.

Sd/- P.N.M.

Remembrancer of Legal Affairs.

U.R.to E.D., No.5465 dated the 3rdJuly 1942.

V.M.D.

4-6-43.

Submitted.

The R.L.A. is requested to advise if the passage marked in blue pencil at p.7 ante constitutes Contempt of Court.

2. The passage in question runs as follows:-

"From the persons in the Province who were prosecuted, the way they were prosecuted, and the manner in which the prosecutions were conducted it appears that Government has evaded protecting even ordinary civil rights. In spite of the fact that the reports of the speeches were not complete and that there were strange discrepancies in the evidence tendered by the witnessed heavy sentences were imposed. For instance, Mr. Appasaheb Patwardhan."

In the above passage the Criminal Courts are criticised for passing heavy sentences on the accused in spite of the fact that the reports of the speeches for which they had been prosecuted were not complete and there were strange discrepancies in the evidence tendered by witnessed. The question is whether this criticism amounts to a contempt of Court. It has been laid down that any act done or writing published which is calculated to bring a Court or Judge into contempt or to lower his authority, or to interfere with the due course of justice of the lawful process of the Court is a contempt of the Court. This principle has been definitely enunciated in the case of the Queen vs. Gray 1900 2 Q.B.D. 36. But in the course of the judgment Lord Russel Chief Justice goes on to

State "Judges and Courts are alike open to criticism; and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good; no Court could or would treat that as contempt of Court." See also I.L.R.7Rang. 844. A comment on the judgment of a Court which does not impute corrupt or dishonest motives to the Court would not come within contempt. In the present case, the comments do not attribute any dishonest or corrupt motives to the judges who passed the sentences, neither do they contain any vituperation or invective. They simply suggest that the sentences were wrongly passed the judges relied on incomplete reports and faulty evidence. It may be said that they contain a hidden inuendo that the judiciary acted as a handmaid of the executive, but that would be a far fetched inference and it does not appear that the Bombay High Court would on such a ground take action in this case.

D.S. Sd/-
e/7

(The passage marked blue on p.7 ante falls to be examined with reference to that variety of contempt under the common law whcih is styled "Scandalising the Court")

V.M.D.

4-5-56.

Office of R.L. A.

Any act done or writing published which challenged the integrity of the Court or is calculated to bring a Court or a judge into contempt or to lower its or his authority falls under that variety of contempt which is characterised as "scandalising the Court or judge." But as Lord Russel of Killowen C.J. observed in Rex v. Gray, (1900) 2 Q.B.D. 36 at p. 40, " That description of that class of contempt is to be taken subject to one and an important qualification. Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court." It is also laid down in the same judgment that this common law jurisdiction is " exercisable only when the case is clear and beyond reasonable doubt."

The passage marked blue on page 7 ante postulates that the sentences passed are heavy and possibly wrong as Courts relied on incomplete records and discrepant evidence. Particular support for this is sought in the instance of Appasaheb Patwardhan's case. This may amount to fair comment honestly offered. It is very doubtful if the High Court will be persuaded to act on the view that the passage castigates all the Courts as servile handmaids of an unscrupulous Government. I do not consider the passage as strong enough to be brought to the notice of the High Court for contempt.

Sd/- P.M.M.
11-7

Remembrancer of Legal Affairs.

U.R. to H.D. (Political), No.5700, dated the 13th July 1942.

R.I. No.8111
18-8-1942

Submitted.

2. On the recommendation of the Council of State, the G of I, has undertaken to examine the law of contempt of Court as administered in British India with a view to amend and consolidate it if found necessary. The following two points are specifically under the consideration of Govt., viz-

1) The conferment of a right of appeal in such contempt cases of a criminal nat and

2) the barring of a scandalised judge from participating in the adjudication of contempt proceedings based on the scandalisation.

As regards the 1st point the G. of I is of opinion that it is out of question to confer by statute a right of appeal to the Privy Council (notwithstanding appeal by leave of Privy Council) in contempt cases-which are as a rule quasi criminal, when no appeal lies to the Privy Council as of right in any criminal cases even where the extreme penalty of death is imposed. The G. of I. thinks that it is also not possible to provide an appeal in contempt cases to the Federal Court unless Sec. 206 of the G.of I.Act is suitably amended. The G.of I. has however no objection to conferring a statutory right of appeal to the High Court in all cases civil or criminal. As regards the second point the G.O I.feels that the trial by the scandalised Judge of his own cause is opposed to the elementary principle of justice and an appropriate remedy would be to insert a section in the

Courts Act, 1926, to the effect that no judge of a High Court or Chief Court shall take cognisance of any contempt involving imputations against himself personally. To meet the possibility of cases where the whole Courtkx is scandalised or so many Judges are brought into contempt that a sufficient number is not left over for the hearing of the case the following alternative suggestions have been made by the Government of India, namely:-

(1) That a proviso should be added to the proposed section to the effect that the section will have no application in any case where the contempt involve personal imputations against more than half the number of the Judges constituting the High Court or Chief Court.

(ii) That where the number of Judges affected by the scandalisation leaves an insufficient number of Judges capable of forming the Bench for thekx trial of the contempt, the Court should be required to apply to the Provincial Government for a direction under section 527 of the Code of Criminal Procedure, 1898, and that upon such application the Provincial Government should have discretion either to direct the transfer of the case to another High Court or to direct the case to be triedby the normal High Court notwithstanding that such trial involves the inclusion of a scandalised Judge or Judges on the Bench.

The Government of India has invited the views of the Provl. Govts on these proposals together with any further points that suggest to those Govts. This Govt. called for the views of the H.C., Bombay on the proposals made by the G. of India. The letter from the H.C. is at p.19 ante. The H.C. is of opinion that cases of criminal contempts are of such rare occurrance (i.e. probably less than one a year) at least in this H.C. that the present lack of provision for appeal works no substantial injustice. As regards the 2nd point the H.C. only deals with contempts in the face ofthe Court and holds that such a course would be highly detrimental to the dignity of the Court. H.D. now calls for R.L.A's on the proposal.

Office of the A.G.A.

It is alleged in the extract from the Council of State's debates that there is uneasiness in the public mind regarding the state of the law of criminal contempt of court. It is sought to show that in the remarks of certain judges there is ground for this uneasiness. The Chief Justice of India, the Chief Justice of Bombay and Mukerjee J. of the Calcutta High Court are quoted in this connection. The judgment from which the dictum of the Chief Justice of India is taken is not available yet. But when the remarks of the two other judges are read in their context in the cases from which they are taken, they appear to afford little or no support to the present proposals. In neither of these two cases is there any suggestion that there ought to be a right of appeal or that there is anything wrong in the judge who is scandalised being one of the trial judges.

2. The criticism that the judge scandalised ought not to try the case appears to ignore the nature of such cases. The facts are practically never in dispute and very rarely in cases of scandalising the court is there any attempt to justify. As regards the courts in India there appear to be only two cases on record where a person guilty of scandalising the court pleaded or attempted to prove that the libel was true. (Re. Hans Mohan Lal Agarwala A.I.R. All 1935, p.38 and Re. K.L. Gauba, A.I.R. 1942 Lah. p.105). In neither of those cases was the accused allowed to call evidence to prove his allegations. It is settled law here and in England that in such cases the contemner is precluded from trying to prove his allegation See 1894 1 Ch. 347 where Chitty J. said:

> The plaintiffs' counsel not only admitted, but boldly asserted, and made it part of their argument, that the circular was libellous, and that they could justify the libel, and they referred to some of the evidence which apparently had been adduced for the purpose of sustaining the justification. But the evidence and t the argument founded on it are irrelevant on this motion."

Correspondingly, there is no attempt to prove the allegations false. There would, therefore, be no question of putting in the witness box the judge scandalised. Therefore if he were not among the trial judges the public would have to rest content with a denial at second hand of the allegations. Granting the nature of such proceedings it is obviously desirable that the judge scandalised should be among the trial judges in order to give any explanations that may be necessary. In this respect the views of the Chief Justice of Lahore in Re.K.L. Gauba, A.I.R. 1940 Lah.105 appear sound. In the absence of evidence it seems desirable that at least in some cases of scandalised. the court, there should be a full and detailed denial of the allegations and the only person who can with propriety give that explanation is the judge scandalised. For that reason it is right that the judge scandalised should be one of the trial judges.

3. The questions at issue in such cases are not the truth or falsity of the allegations but whether they amount to criminal contempt of court and secondly, if so, whether they ought to be punished brevi manu. Fruther, it appears to be the second question which arises by far the most often and about which there appears to be some difference of opinion among judges and courts. For example, in the Calcuta Case in Re. Tushar Kanti Ghosh, A.I.R. 1935 Cal. 419 the five judges held that there was contempt of court. But while four thought the accused ought to be punished that manu, Mukerji J. held that the aughorities established that in the case of scandaliing the court the process ought to be used when the contempt was in connection with a specific suit or case. It is settled law that courts of recordhave a discretion whether or not to use this process. They do not use it automatically every time a case of criminal contempt is brought to their notice, and in many cases even when the process is used they are content with an apology. They realise that it is a matter for their discretion and that the case ought to be clear

and amount to something more than technical contempt of court. In the Legal Remembrancer vs.Matilal Ghosh and Another 41 Cal. p. 175 at p.221 Jenkins C. J. said:-

"It is not enough that there should be a technical contempt of court. It must be shown that it was probable that publication would substantially interfere with the due administration of justice..... It is no matter for surprise that the cases are full of warnings that this arbitrary unlimited and uncontrolled power should be exercised with the greatest caution.

In the extract of the debates in the Council of State there are quoted two remarks, one by the Chief Justice of India and the other by the Chief Justice of Bombay. These remarks indicate that in India in the past the process has perhaps been used more often than was necessary. But these and similar pronouncements by judges do not show that there is anything radically wrong with the manner in which the courts now exercise their summary powers. When the use of the process is discretionary even in cases where the offending action amounts to criminal contempt of court, then it is natural that there should be marginal cases about which different judges would have different opinions regarding the necessity of using this summary process. It is also natural that the highest courts like the Privy Council and the Federal Court should take the opportunity now and then of advising subordinate courts regarding the manner in which process ought to be used. The present tendency appears to be for the higher courts to advise as sparing a use as possible. But there seems little justification for interpreting the utterances of these courts as an indication that there is something radically wrong with the law of contempt of court or the courts' exercise of their powers under that law. It seems best to allow the influences of these higher courts to work naturally rather than attempt to implement them by proposals like the present.

4. The proposal to confer a right of appeal to the same High Court in its appellate jurisdiction seems to ignore the fact that contempt cases are often heard by three judges

and some times by five judges. Rarely, if ever, is a case of scandalising the court tried by a single judge. The unanimous opinion of a Bench of three or five judges probably represents the majority opinion of the whole High Court and it is doubtful if the conferment of a right of appeal to the same High Court would make much difference to the result. It is true that the use of the profess is discretionary and also that there may be cases where it is doubtful whether the facts amount to contempt of court and therefore there is room for difference of judicial opinion. But to some extent these differences appear to be rather between different High Courts than between the judges of the same High Court. Some High Courts appear to use the process more freely than others. Therefore, if a right of appeal is to be conferred it would be most useful from this point of view to confer it upon the Federal Court or the Privy Council. But as pointed out by the Government of India that proposal for other other reasons is impracticable.

5. As regards a right of appeal in cases of scandalising a court, it may be pointed out that the contemner is not on the same footing as the accused in an ordinary criminal case. He has offended and has libelled the court or a judge of the court. The only question for decision are whether his libel amounts to criminal contempt of court, and, secondly, if so, whether the court ought to punish it brevi manu. These are two questions of law and although the procedure is summary and is no evidance allowed, the accused on these and cognate questions is allowed is allowed to defend himself by counsel. So far as the reports show the courts deal with those cases carefully and there appears no good ground for believing that there is much scope in the proceedings for anything other than substantial justice being done.

6. Judges have often pointed out anomalous features in dealing with a person by this process. The trial lacks the safeguards that the ordinary procedure requires. The accused,

If he has libelled the court is not allowed to prove his allegations. The complaints, as it were, are themselves the judges. The accused has no right of appeal. Judges in those circumstances have sometimes professed to find themselves in an embarrassing situation. But if the process is to be used at all these appear to be necessary features. Judges do not seem to have suggested that any of these features should be removed. No case has been pointed out where a judge has suggested that the accused ought to be allowed to lead evidence or have the right of appeal. The fact that judges are aware of those anomalies is some assurance that the judges will use the process cautiously; for something must be left to the good sense and fairness of the judges. Further, in certain cases the Privy Council will hear appeals. The doubt that formerly existed on this point has now been removed by Ambard vs. The Attorney General of Trinidad 1936 A.L.R. p.631. That case must be taken as establishing the right of appeal. What that right will mean in practice may be doubtful. But it seems premature to condemn it as an insufficient safeguard against injustice. On the whole therefore there seems little reason to suppose that the courts in India at present abuse their powers or the law of criminal contempt requires amendment in the manner proposed.

Sd/- P.N.B.
7/10

Remembrancer of Legal Affairs.

U.O. to N.P., No. 8143 dated the 7th October 1942.

R. I. No. 12551
14-12-42.

Submitted.

2. The leading article in the issue of the "Free Press Journal", dated 3-12-42 contains comments on a case in which Albert Thomas and John Amanoo, two Negro seamen were convicted by the Chief Presy. Magistrate, Bombay, of assaulting a superior European officer and fined Rs.25 each. The D D M.D. is of the view that it is difficult to say whether a contempt proceeding is advisable in this case and that it being a trifling matter, it is not worthwhile going in for it. The H.L.A. is requested to advise whether the passage marked in red pencil at p. 3 ante constitutes contempt of court.

3. In the leading case of Regina v. Gray (1900, 2 Q.B.36) Lord Russel, of Killowen the then Lord Chief Justice of England, observes as follows:-

"Any act done or writing published calculated to bring a court or a judge of the court into contempt or to lower his authority is a contempt of court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of courts is a contempt of court. The former class belongs to the category which Lord Hardwicke, L.C. characterised as 'scandalising a court or a judge.' (In re. Read and Huggonson (1742) 2 Atk. 291,469 That description of that class of contempt is to be taken subject to one and an important qualification. Judges and courts are alike open to criticism, and if reasonable argument or

expostulation is offered against any judicial act as contrary to law of the public good, no court could or would treat that as contempt of court." It is also laid down in the same judgment that this common law jurisdiction is exercisable only when the case is clear and beyond reasonable doubt." (cf.also Andre Paul v. Attorney General of Trinidad -38 B.L.R.681).

Applying this principle, the only passage in the article which can be questioned runs as follows;

"Accepting that the officer was hustled one would still wonder if being insulted as "Black Niggers" is not provocation enough. Coloured men would wonder why Mr. Brown did not give adequate weight to the evidence of the defence witnesses. They could scarecely avoid the feeling that in this case there has been a manor miscarriage of justice."

The portion underlined above shows that the attack is mainly directed towards the Magistrate for not giving due consideration to the ~~steemnts~~ statements of the accused and the defence witnesses that they were first provoked by the complainant by being called " Black Niggers",and as a result they could scarcely avoid the feeling that there has been a minor miscarriage of justice. This may amount to fair comment honestly offered. Since the article was published after the disposal of the case, it cannot be said to have substantially interfered with a fair trial (Halsbury's Laws of England Vo,.VII pp.10-11- of R.L.A 's No.532 -p dated 2-8-30

Office of the R.L.A.

The article at first sight seems to accuse the Magistrate of being prejudiced because the complainant was a white man and the accused Negroes. But the article really says little more than that there was insult enough in the complainants language to justify the Negroes ~~in their~~ in their action and that on that ground the Magistrate ought to have acquitted. That can hardly be called contempt of Court. Even if it did amount to contempt of Court, the Bombay High Court is unlikely to regard it seriously enough to justify the issue ofprocess. See Government Pleader, High Court, Bombay vs. S.D. Savidekar, 40 B.L.R. and The Government Pleader, High Court, Bombay vs. T.S. Jadhav, 40 B.L.R. 75.

Sd/- K.M.M.
22-12
Remembrancer ~~Secretary~~ of Legal Affairs.

U.R. to D.O. No. 10897, dated the 22nd December 1948.

V.M.D.
4-5-56